



No. 19-cr-356, 2020 U.S. Dist. LEXIS 53632, \*16 (D.D.C. March 27, 2020) (granting Section 3145(c) relief to a defendant after a jailhouse COVID-19 case was reported, concluding that the defendant should not be required to “wait and see” if he becomes infected from COVID-19 and observing that “uncertainty cannot preclude courts from acting until the damage has been done”).

The defense also wishes to comment briefly on three additional developments:

**Dr. Conroy’s supplemental declaration.**

1. In response to new medical information obtained by defense counsel, Dr. Conroy has recently submitted a supplemental declaration stating that she no longer characterizes Al-Timimi’s hypertension as well-controlled and has “directed that additional medical steps be taken to address it.” *See Supplemental Declaration of Susan Conroy* [Dkt. No. 510] (under seal), ¶¶ 3-4. Dr. Conroy also confirms that Al-Timimi’s BMI exceeds the threshold of 30, which the CDC reports is another risk factor for severe illness from COVID-19. *See id.*, ¶¶ 9-10. Thus, both parties now acknowledge that Al-Timimi is at heightened risk for severe COVID-19 disease under CDC guidelines should he become infected.

2. Dr. Conroy also indicates that she has told Al-Timimi “that he must take affirmative steps to help manage his health,” and has “advised him to lose weight . . . , eat fewer carbohydrates, and exercise more.” *Id.*, ¶ 9. Unfortunately, this advice has limited utility at Florence ADX. On information and belief, Al-Timimi is presently allowed recreation only once per week and spends the remainder of his time solitarily confined to a 75 square-foot cell the approximate size of a parking space. He is permitted only two showers per week and receives his meals from the prison through a slot in the door, which he eats within arm’s length of the toilet. In accordance with Dr. Conroy’s advice, however, the defense attaches for this Court’s consideration an updated proposed order of conditional release, which would additionally (1)

grant Al-Timimi a furlough for outdoor exercise within a one-block perimeter of his residence, and (2) permit Al-Timimi to leave the residence to attend medical appointments.

3. Finally, Dr. Conroy also indicates that she has ordered that “Al-Timimi’s blood pressure be checked two times per week for the next 30 days.” Supplemental Conroy Decl., ¶ 7. However, undersigned defense counsel have recently received a new legal letter from their client, who reports that, as of the week of July 24, ADX medical personnel have once again discontinued his blood pressure screenings. *Cf. Declaration of Dr. Chris Beyrer, MD, MPH* [Dkt. No. 466, Ex. A], ¶ 23(d) (“Correctional facilities frequently have insufficient medical care for the population even outside times of crisis.”).

**The government’s withdrawal of its under-seal arguments.**

4. On July 13, the government noticed that it was withdrawing its under-seal arguments against Al-Timimi’s motion. *See* Dkt. No. 505 at 2-3. As such, it now reverts to its original arguments advanced in its opposition brief and during this Court’s telephonic hearing on June 11.

**The COVID-19 pandemic is only one of two “exceptional reasons” identified in Al-Timimi’s motion.**

5. Finally, the defense notes that the ongoing COVID-19 pandemic is only one of two exceptional reasons that Al-Timimi identified in his motion. Aside from COVID-19, Al-Timimi also faces a high risk of unjust confinement given that his prison sentences are now fully discharged on Counts 1-6. The remaining Counts 7-10 are the subject of active motions that present a multitude of substantial legal issues. *See* Dkt. No. 466 (opening memorandum brief) at 13-17; Dkt. No. 477 (reply brief) at 3-12.

Dated: August 3, 2020

Respectfully submitted,

/s/

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### **CERTIFICATE OF SERVICE**

I certify that on August 3, 2020, I will file the foregoing document on the CM/ECF system, which will then serve it by electronic notification on all parties of record. This Court's designated Classified Information Security Officer has confirmed that the present motion may be filed on the public docket.

/s/

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